

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID DONALD TURNER,

Defendant.

No. CR 05-1026-LRR

**FINAL JURY INSTRUCTIONS**

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Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NUMBER \_\_\_\_\_**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NUMBER \_\_\_\_\_**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

**INSTRUCTION NUMBER \_\_\_\_\_**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

**INSTRUCTION NUMBER \_\_\_\_\_**

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
2. Statements, arguments, questions and comments by the lawyers are not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

## **INSTRUCTION NUMBER \_\_\_\_**

You have heard a certain category of evidence called “other acts” evidence. Here you have heard evidence that the defendant was involved in manufacturing methamphetamine and also used methamphetamine on occasions other than on about July 23, 2005, when he allegedly manufactured methamphetamine which led to the current charge in Count 1 of the Indictment. You may not use this “other acts” evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider “other acts” evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make this finding, then you may consider the “other acts” evidence to decide the defendant’s intent, knowledge and absence of mistake. “Other acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed other acts in the past, this is not evidence that he committed such acts in this case. You may not convict a person simply because you believe he may have committed other acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of “other acts” only on the issue of his intent, knowledge and absence of mistake.

**INSTRUCTION NUMBER \_\_\_\_\_**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NUMBER \_\_\_\_\_**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.



**INSTRUCTION NUMBER \_\_\_\_\_**

You have heard evidence that Rex Breitbach, John Hoyne and Jodie McAtee were each once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

You have heard evidence that Rex Breitbach has received a promise from the government that his testimony will not be used against him in a criminal case, unless he testifies falsely. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the government's promise is for you to determine.

You have heard testimony from Jodie McAtee. This witness entered into an agreement with the government providing that if she provides substantial assistance to the government in its investigation of crimes, the prosecutor could file a motion for a reduction of her sentence. If the prosecutor handling Jodie McAtee's case believes she provided substantial assistance, that prosecutor can file in the court in which the charges are pending against her a motion to reduce her sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and, if so, how much to reduce it. Jodie McAtee's testimony was received in evidence and may be considered by you. You may give her testimony such weight as you think it deserves. Whether or not certain testimony of a witness was influenced by her hope of receiving a reduced sentence is for you to decide.

**INSTRUCTION NUMBER \_\_\_\_**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

**INSTRUCTION NUMBER \_\_\_\_\_**

You have heard testimony from persons described experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinions on matters in that field and may also state the reasons for his opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

**INSTRUCTION NUMBER \_\_\_\_**

The Indictment in this case charges the defendant with two separate offenses.

Count 1 charges that the defendant knowingly and unlawfully attempted to manufacture 50 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance.

Count 2 charges that the defendant knowingly made a false material declaration before the court.

The defendant has pleaded not guilty to each of these charges.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

**INSTRUCTION NUMBER \_\_\_\_\_**

The crime of attempting to manufacture actual (pure) methamphetamine as charged in Count 1 of the Indictment has four essential elements, which are:

- One,*           on about July 23, 2005, the defendant intended to manufacture actual (pure) methamphetamine;
- Two,*           the defendant knew the material he then intended to manufacture was a controlled substance, actual (pure) methamphetamine;
- Three,*        the defendant voluntarily and intentionally carried out some act which was a substantial step toward manufacturing actual (pure) methamphetamine; and
- Four,*         the amount involved in the offense was 50 grams or more of actual (pure) methamphetamine.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime of attempting to manufacture actual (pure) methamphetamine; otherwise you must find the defendant not guilty of the crime charged under Count 1.

**INSTRUCTION NUMBER \_\_\_\_\_**

You are instructed as a matter of law that actual (pure) methamphetamine is a Schedule II controlled substance. You must ascertain whether or not the substance in question in this case was actual (pure) methamphetamine. In ascertaining whether the substance in question was in fact actual (pure) methamphetamine, you may consider all the evidence in the case which may aid in the determination of that issue.

In considering whether the government has met its burden of proving the crime charged in Count 1 of the Indictment, you are further instructed as follows:

In determining whether the defendant is guilty of attempting to manufacture actual (pure) methamphetamine as charged in Count 1, the government is not required to prove that the amount or quantity of actual (pure) methamphetamine was as charged in the Indictment. The government need only prove, beyond a reasonable doubt, that there was a measurable amount of actual (pure) methamphetamine. However, if you find the defendant guilty of the offense of attempting to manufacture actual (pure) methamphetamine as charged under Count 1, you will need to determine whether the quantity of actual (pure) methamphetamine involved in the offense was 50 grams or more; 5 grams or more but less than 50 grams; or less than 5 grams. The burden of proof is on the government to establish the quantity beyond a reasonable doubt.

For your information, one gram contains 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram contains 1,000 grams.

## **INSTRUCTION NUMBER \_\_\_\_\_**

The crime charged in Count 1 of the Indictment is attempting to manufacture actual (pure) methamphetamine. A person may be found guilty of attempting to manufacture actual (pure) methamphetamine if he intended to manufacture actual (pure) methamphetamine and voluntarily and intentionally carried out some act which was a substantial step toward the manufacture.

A substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with design to violate the statute. Crimes such as attempt to manufacture actual (pure) methamphetamine require a defendant to engage in numerous preliminary steps which brand the enterprise as criminal.

**INSTRUCTION NUMBER \_\_\_\_\_**

The crime of making a false declaration, as charged in Count 2 of the Indictment, has four essential elements, which are:

*One,*           on March 8, 2005, the defendant testified falsely, under oath or affirmation before a court, as follows:

Question:     Did you ever have any kind of drug dealing with Rex?

Defendant's Answer:     No.

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Question:     Did you ever assist Rex or did you ever have any involvement with him in manufacturing methamphetamine?

Defendant's Answer:     No.

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Question:     Did you know that Rex was a drug user during that springtime of 2004?

Defendant's Answer:     I had no idea.

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Question:     Just so I understand, you've never seen Rex use drugs?

Defendant's Answer:     No.

**(CONTINUED)**



**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

*Two,*            such testimony was false in whole or in part;

*Three,*        at the time he so testified, the defendant knew his testimony was false; and

*Four,*        the false declaration was material.

A false declaration is “material” if the declaration was capable of influencing the court. It is not necessary to find that the false declaration actually affected the court.

In order to be guilty of making a false declaration, the defendant must have had the willful intent to provide a false declaration, rather than declaring falsely as a result of confusion, mistake or faulty memory.

You need not find that all of the alleged statements charged as false in Count 2 of the Indictment are false; instead, you must find unanimously and beyond a reasonable doubt that at least one of the statements set out in Count 2 of the Indictment is false.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime of making a false declaration; otherwise you must find the defendant not guilty of the crime charged under Count 2.

**INSTRUCTION NUMBER \_\_\_\_\_**

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NUMBER \_\_\_\_\_**

You will note Count 1 of the Indictment charges that an offense was committed “on about” a certain date. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

**INSTRUCTION NUMBER \_\_\_\_\_**

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

**INSTRUCTION NUMBER \_\_\_\_\_**

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NUMBER \_\_\_\_\_**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

**INSTRUCTION NUMBER \_\_\_\_\_**

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

**(CONTINUED)**

**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Finally*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.



**INSTRUCTION NUMBER \_\_\_\_\_**

Attached to these instructions you will find two Verdict Forms. The Verdict Forms are simply the written notice of the decisions that you reach in this case. The answer to each Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Forms, sign and date them and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**LINDA R. READE  
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID DONALD TURNER,

Defendant.

No. CR 05-1026-LRR

**VERDICT FORM - COUNT 1**

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We, the Jury, find the defendant, David Donald Turner, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of attempting to manufacture actual (pure) methamphetamine, as charged in  
Count 1 of the Indictment.

Note: If you unanimously find David Donald Turner guilty of the above crime, have your foreperson write "guilty" in the above blank space, sign and date this Verdict Form.

If you unanimously find David Donald Turner not guilty of the above crime, have your foreperson write "not guilty" in the above blank space, sign and date this Verdict Form.

If you found the defendant guilty of attempting to manufacture actual (pure) methamphetamine as charged in Count 1 of the Indictment, please answer the following question:

Question: Please put a (✓) mark on the line before the amount of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in the offense:

\_\_\_\_\_ 50 grams or more of actual (pure) methamphetamine

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID DONALD TURNER,

Defendant.

No. CR 05-1026-LRR

**VERDICT FORM - COUNT 2**

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We, the Jury, find the defendant, David Donald Turner, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of making a false declaration before the court, as charged in Count 2 of the  
Indictment.

Note: If you unanimously find David Donald Turner guilty of the above crime, have your foreperson write “guilty” in the above blank space, sign and date this Verdict Form.

If you unanimously find David Donald Turner not guilty of the above crime, have your foreperson write “not guilty” in the above blank space, sign and date this Verdict Form.

If you found the defendant guilty of willfully and intentionally making a false declaration before a court as charged in Count 2 of the Indictment, please answer the following question:

Question: Please put a (✓) mark on the line before the statement or statements that you unanimously find, beyond a reasonable doubt, David Donald Turner willfully and intentionally falsely made to the court:

\_\_\_\_\_ Question: Did you ever have any kind of drug dealing with Rex?  
Defendant's Answer: No.

\_\_\_\_\_ Question: Did you ever assist Rex or did you ever have any involvement with him in manufacturing methamphetamine?  
Defendant's Answer: No.

\_\_\_\_\_ Question: Did you know that Rex was a drug user during that springtime of 2004?  
Defendant's Answer: I had no idea.

\_\_\_\_\_ Question: Just so I understand, you've never seen Rex use drugs?  
Defendant's Answer: No.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE